Gu FDR 5577425
CHRIS ALEXANDER

AO106 (Rev. 12/03) Affidavit for Search Warrant

# UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

In the Matter of the Search of
(Name, address or brief description of person, property or premises to be searched)

One (1) Motorola V3 Cellular Telephone
Serial Number: SJUG0595BA
Silver colored

APPLICATION AND AFFIDAVIT
FOR SEARCH WARRANT

Case Number: '08 MJ 8015

I, RUSSELL H. VENSK, JR. being duly sworn depose and say:

I am a(n) Special Agent with U. S. Immigration & Customs Enforcement and have reason to believe
Official Title

that ☐ on the person of or ☑ on the property or premises known as (name, description and/or location)

REFER TO ATTACHMENT A

in the SOUTHERN District of CALIFORNIA

there is now concealed a certain person or property, namely (describe the person or property to be seized)

REFER TO ATTACHMENT B

which is (state one or more bases for search and seizure set forth under Rule 41(c) of the Federal Rules of Criminal Procedure)

electronic data that constitutes evidence of a criminal offense, and electronic data which is and has been used as the means for committing a criminal offense.

concerning a violation of Title 21 United States code, Section(s) 841(a)(1), 952 & 960

The facts to support a finding of probable cause are as follows:

REFER TO ATTACHED AFFIDAVIT OF SPECIAL AGENT VENSK.

FILED
JAN 11 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

Continued on the attached sheet and made a part hereof: ☑ Yes ☐ No

Signature of Affiant

Sworn to before me and subscribed in my presence,

1/11/08 @ 11:32 am at EL CENTRO CALIFORNIA
Date City State

Peter C. Lewis U.S. Magistrate Judge
Name of Judge Title of Judge Signature of Judge

# ATTACHMENT A

## PREMISES KNOWN AS:

1. Item 1: Motorola V3 cellular telephone, silver-colored. This telephone is identified by serial number SJUG0595BA. The cellular telephone is presently in the custody of ICE Special Agent Russell H. Vensk Jr.

# ATTACHMENT B

## PROPERTY/ITEMS TO BE SEIZED

The items to be seized are electronic data that constitute evidence of the commission of a criminal offense, and electronic data which is and has been used as the means for committing a criminal offense. The specific criminal offenses involved are violations of Title 21, United States Code, Sections 952 and 960, Importation of a Controlled Substance, and Title 21, United States Code, Sections 841(a)(1), Possession of a Controlled Substance with intent to distribute. The items to be seized include the electronic data described below:

1. The phone numbers and/or direct connect and/or names and identities assigned to the cellular phone;
2. Digital, cellular, and/or telephone numbers and/or direct connect numbers, names and identities stored in the directories;
3. Phone numbers and direct connect numbers dialed from the cellular phone and stored in memory;
4. The last number dialed from the cellular phone and;
5. Any other electronic information in the stored memory of the cellular phone, including but not limited to text messages and voicemail, relating to violations of Title 21, United States Code, Sections 952 and 960, importation of a controlled substance, and Title 21, United States Code, Sections 841(a)(1), possession of a controlled substance with intent to distribute.

FILED
JAN 11 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

| | |
|---|---|
| In the Matter of the Search of<br>One Motorola V3 cellular telephone<br>Serial Number: SJUG0595BA<br>Silver-colored | ) Magistrate Case No.: '08 MJ 8015<br>) AFFIDAVIT OF ICE SPECIAL AGENT<br>) RUSSELL H. VENSK JR., IN SUPPORT<br>) OF SEARCH WARRANT APPLICATION |

I, Russell H. Vensk Jr., being first duly sworn, hereby depose and say:

## PURPOSE

1. This affidavit is made in support of an application for a search warrant for federal agents to search the following cellular telephone for electronic data that constitutes evidence of the commission of a criminal offense, and electronic data which is and has been used as the means for committing a criminal offense: one (1) silver-colored Motorola V3 cellular telephone, serial number SJUG0595BA.

## BACKGROUND AND EXPERTISE

2. I am a special agent with United States Immigration and Customs Enforcement (ICE), which is a component agency of the Department of Homeland Security. I have been employed as an ICE special agent since March 1, 2003. Prior to that I was a special agent with the United States Immigration & Naturalization Service since May of 1996. Previously, I was employed as a United States Border Patrol agent from February of 1991 to May of 1996. I have been cross-designated by the United States Drug Enforcement Administration (DEA) to conduct controlled substances

investigations and enforce provisions of the Federal Controlled Substances Act, pursuant to Title 21 of the United States Code.

3. As an ICE special agent, I have participated in training programs related to controlled substances, including but not limited to marijuana, cocaine, methamphetamine and heroin. I have also received training in the methods used by controlled substance traffickers to import, distribute, package and conceal controlled substances. Moreover, I have participated in investigations and executed arrests for controlled substances-related offenses, including possession with the intent to distribute, transportation and the importation of controlled substances.

4. This statement is made in support of an application for a search warrant to search one cellular telephone that is believed to contain evidence of violations of Title 21, United States Code, Sections 952 and 960, Importation of a Controlled Substance, Title 21, United States Code, Sections 841(a)(1), Possession of a Controlled Substance with Intent to Distribute.

5. This affidavit does not contain all of the information known to federal agents regarding this investigation, but rather, contains only those facts believed to be necessary to establish probable cause.

6. Based upon my training and experience as a special agent, consultations with other special agents and law enforcement officers experienced in controlled substance trafficking investigations and all the facts and opinions set forth in this affidavit, I submit the following:

a. Controlled substance traffickers will use cellular phones because they are mobile and they have instant access to phone calls and voice messages;

b. Controlled substance traffickers believe that cellular phones provide greater insulation and protection against court-ordered wiretaps and they believe in the inability of law enforcement personnel to simultaneously track the originating and destination phone numbers of calls placed to and from their cellular phones;

c. Controlled substance traffickers use cellular phones to communicate directly with the drivers of the vehicles that contain the controlled substances. This instant communication allows the controlled substance traffickers to monitor the movement of the controlled substances from the shipment point to the point of delivery. Cellular phones allow controlled substance traffickers to give directions to the drivers, such as what time to enter into the U.S., which lane to use at the POE, and where to deliver the controlled substances. Controlled substances traffickers either give a cellular phone to the driver or obtain the contact information for the driver's personally owned cellular phone.

d. ICE agents will deliver the cellular phone to cellular phone forensic examiners at the ICE special agent-in-charge San Diego forensics group. These examiners may be able to determine the personal identification numbers, turn on the cellular phones, and retrieve data from the cellular phones. Unlike typical computers, cellular phones do not have hard drives and store information in volatile memory. Current technology does not provide solutions for imaging the data stored in cellular phone memory. Consequently, the phones will have to be powered up and turned on by a forensics examiner. The examination may be delayed due to the lack of the appropriate charging device. The examiner will need to manually examine the cellular phones and their functions and record their findings using digital photography. This process is time and labor intensive and, depending upon the workload of the few certified cellular phone forensic examiners available, may take weeks or longer. Therefore, your affiant is requesting that the time for service be extended to thirty days.

## SUMMARY OF INVESTIGATION / FACTS SUPPORTING PROBABLE CAUSE

7. This affidavit is based on the reports and documents furnished to ICE Special Agent (SA) Russell H. Vensk Jr.

8. On December 5, 2007, I, SA Russell H. Vensk Jr., responded to the Calexico, Ca. West Port of Entry (POE) regarding a seizure of cocaine.

9. On December 5, 2007, at approximately 1235 hours, Luis Enrique CALDERON-Quinonez, a

citizen of Mexico, entered the U.S. via lane number nine at the Calexico, Ca. West Port of Entry (POE). CALDERON was the driver and sole occupant of a blue 1997 Chevrolet Silverado SUV bearing Baja California, Mx. license plate AHV8149.

10. At primary inspection, CALDERON presented his DSP-150 (B1/B2 visa) to Customs & Border Protection Officer (CBPO) Chris Alvarado. CBPO Alvarado asked CALDERON if he was bringing anything from Mexico and where he was going. CALDERON gave a negative customs declaration and said he was going to Calexico to shop at Las Palmas. CBPO Alvarado referred CALDERON and the vehicle to secondary.

11. In secondary inspection, CALDERON presented his DSP-150 (B1/B2 visa) and gave a negative customs declaration to CBPO Kathy Rivera. CBPO Rivera then went to request an agricultural specialist to obtain an agriculture declaration from CALDERON.

12. Canine Enforcement Officer (CEO) Craig Randolph screened the vehicle with Narcotic Detector Dog (NDD) Pina (CF-24). NDD Pina alerted to the presence of contraband concealed within the rear quarter panels. CEO Randolph informed CBPO Leslie Ledbetter of the alert.

13. CBPO Ledbetter then began an inspection of the vehicle. CBPO Ledbetter entered the vehicle and removed the molding and pulled the paneling away from the right rear quarter panel. CBPO Ledbetter reached inside and felt a package. He then exited the vehicle, escorted CALDERON to the vehicle secondary office and conducted a patdown search, which was negative for contraband.

14. CBPO Ledbetter returned to the vehicle to continue his inspection. CBPO Ledbetter probed the package and extracted a white powdery substance. At this time, Special Agent (SA) Russell H. Vensk Jr. arrived at the vehicle and told CBPO Ledbetter that ICE special agents were going to allow CALDERON to leave the POE in the vehicle and follow him. CBPO Ledbetter then field-tested the white powdery substance and it field-tested positive for the presence of cocaine.

15. At approximately 1350 hrs. CALDERON, who was not informed that cocaine had been found in the vehicle, was allowed to leave the POE in the vehicle and SA Vensk followed him. CALDERON proceeded north on Imperial Ave. and turned left (east) on 3rd St. CALDERON parked

the vehicle on the south side of 3rd St. west of Rockwood Ave. CALDERON exited the vehicle, walked to the sidewalk on the south side of the street, faced west and yelled to somebody. It could not be determined to who CALDERON yelled. CALDERON then briefly talked on his cell phone before returning to the vehicle. CALDERON then proceeded east on 3rd St., turned left (north) onto Heffernan Ave., turned left (west) onto 4th St., and turned right (north) onto Imperial Ave. At 5th St., CALDERON made a u-turn and proceeded south on Imperial Ave. in an attempt to abscond into Mexico. At approximately 1400 hrs., CBPO Ledbetter saw the vehicle heading south at the POE. CBPO Ledbetter motioned for CALDERON to stop and placed a tire deflation device in front of the left front tire. CBPO Ledbetter then approached the vehicle, instructed CALDERON to exit the vehicle and placed him under arrest.

16. CBPO Ledbetter then completed his inspection of the vehicle. CBPO Ledbetter found and removed fourteen packages concealed within the right rear quarter panel and twelve packages concealed within the left rear quarter panel. The packages were wrapped in gray duct tape and brown postal tape. CBPO Ledbetter weighed the packages and they had a total net weight of 32.54 kgs. (71.58 lbs.).

17. On December 5, 2007, SA Vensk inventoried CALDERON's personal property, which consisted of one silver-colored Motorola V3 cellular telephone, serial number SJUG0595BA.

## DESCRIPTION OF PROPERTY/ITEMS TO BE SEARCHED

18. The property/items to be searched are further described as: one (1) silver-colored Motorola V3 cellular telephone, serial number SJUG0595BA.

19. The items to be seized from the cellular phone are electronic data that constitute evidence of the commission of a criminal offense, and electronic data that is and has been used as the means for committing a criminal offense. The specific criminal offenses involved are violations of Title 21, United States Code, Sections 952 and 960, Importation of a Controlled Substance and

Title 21, United States Code, Section 841(a)(1), Possession of a Controlled Substance with Intent to Distribute. The items to be seized include the electronic data described below:

a. The phone numbers and/or direct connect and/or names and identities assigned to the cellular phone;

b. Digital, cellular, and/or telephone numbers and/or direct connect numbers, names and identities stored in the directories;

c. Phone numbers and direct connect numbers dialed from the cellular phone and stored in memory;

d. The last number dialed from the cellular phone and;

e. Any other electronic information in the stored memory of the cellular phone, including but not limited to text messages and voicemail, relating to violations of Title 21, United States Code, Sections 952 and 960, Importation of a Controlled Substance and Title 21, United States Code, Section 841(a)(1), Possession of a Controlled Substance with Intent to Distribute.

## CONCLUSION

20. Based on the facts contained in this affidavit and my experience and training, I submit that there is probable cause to believe that one (1) silver-colored Motorola V3 cellular telephone, serial number SJUG0595BA, contains evidence of violations of Title 21, United States Code, Sections 952 and 960, Importation of a Controlled Substance and Title 21, United States Code, Section 841(a)(1), Possession of a Controlled Substance with Intent to Distribute. Further, I believe that the above-described property/items to be seized will be found when this warrant is served and based on the above-listed probable cause, I specifically request authority to seize the items described above and in Attachment B hereto (which is incorporated by reference herein). Therefore, for the reasons set forth in this affidavit and application, I respectfully request that a

search warrant be issued.

21. I, or any other duly authorized federal agent, will personally serve the warrant requested above, and will be assisted by other duly authorized federal investigators.

I swear the foregoing is true and correct to the best of my knowledge and belief.

Russell H. Vensk Jr.
Special Agent
U. S. Immigration & Customs Enforcement

SUBSCRIBED AND SWORN TO BEFORE THIS 11th DAY OF JANUARY 2008.

PETER C. LEWIS
U. S. Magistrate Judge